



AT-1234

Docket 80369F-P
Customer No. 01333

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
Dale F. McIntyre, et al

A KIT FOR ORGANIZING A
PLURALITY OF IMAGES

Serial No. 09/470,938

Filed December 22, 1999

Group Art Unit: 2626
Confirmation No. 6786
Examiner: Jerome Grant II

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Enclosed herewith is Appellants' Appeal Brief for the above-identified
application.

The Commissioner is hereby authorized to charge the following fees, or
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<input checked="" type="checkbox"/>	Appeal Brief filing fee.
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Respectfully submitted,

Frank Pincelli
Attorney for Appellants
Registration No. 27,370

Frank Pincelli/phw
Telephone: 585-588-2728
Facsimile: 585-477-4646
Enclosures



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APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37 and 35 U.S.C. 134

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APPELLANT'S BRIEF ON APPEAL

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims 1-23 which was contained in the Office Action mailed January 13, 2005.

A timely Notice of Appeal was filed April 15, 2005.

Real Party In Interest

As indicated above in the caption of the Brief, the Eastman Kodak Company is the real party in interest.

Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

Status Of The Claims

Claims 1-23 are pending in the application. These claims have been rejected and are being appealed.

Appendix I provides a clean, double spaced copy of the claims on appeal.

Status Of Amendments

The claims stand as indicated in Appendix I.

Summary of Claimed Subject Matter

The present invention is directed to a kit for a customer for organizing a plurality of images from a customer provided image retaining devices. The kit includes an image retaining device 12, such as film cartridge, a registration card for use by the user, and a computer software program to be used on a user computer 30. The registration card is used in accessing a photoservice provider by the customer/user and for registering unique IDs of image retaining devices prior to receipt of the image retaining device by the photoservice provider. The computer software program provided to the user allows the customer to accomplish certain operations at the network service provider with respect to images obtained from the image retaining devices that are later supplied. The image retaining devices may be a thin film cartridge or may take a variety of other

forms such as computer disk, flash card and any other media capable of providing images in a digital format or can be converted into a digital format.

Grounds of Rejection to be Reviewed on Appeal

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1. Whether claims 1, 3-12 and 14-23 are anticipated over EP Publication 0 930 774 A2 to Watanabe et al.
2. Whether claim 2 is unpatentable under 35 USC § 103(a) over EP Publication 0 930 774 A2 to Watanabe et al. in view of Official Notice.

Arguments

Claims 1, 3-12 and 14-23 are not anticipated by Watanabe et al.

Applicant respectfully submits that Watanabe et al. does not teach or suggest a kit as taught and claimed by applicant. Applicant would like to point out that the independent claims are all directed to a kit that is provided to a customer wherein the kit comprises a plurality of specific items. The kit according to the present invention, includes a set of articles to be supplied and used by a customer. In this regard, the dictionary defines a kit as being a set of articles used for a particular purpose; a set of parts or materials to be assembled or a package set of related materials. See Appendix II which is a copy of the definition of kit as set forth in Webster's II New College Dictionary. It is respectfully submitted that the term kit in the preamble must be given weight in the present application. Generally, a claim preamble is limiting if it recites the essential structure or steps or if it is necessary to give life and vitality to the claim. In this particular application, the term "kit" is an essential part of the claimed invention as applicant is attempting to define a set of items that are provided to a customer in the form of a kit composed of the specific items as recited therein. Thus, the "kit" of the present invention requires specific individual articles that are supplied to a customer. The Examiner in the Supplementary Advisory dated May 4, 2005 stated "The body of the claim 1, for example, does not clearly make reference to a kit. The elements which are alleged to comprise a kit are taught by Watanabe et al. Applicant makes allegations and generic statements to the affect

that Watanabe et al. does not teach a kit or the essential parts of the kit.” As Applicants have previously set forth above, Applicant respectfully submits that the claim does properly make reference to a kit.

The Examiner has cited Watanabe et al. as teaching a kit. However, applicant respectfully submits that Watanabe et al. does not teach or suggest a kit as taught and claimed by applicant. Quite the contrary, the Watanabe et al. reference is directed to a Network photographic service which provides digital photographic services on a Network. This is exemplified by the Title, the Abstract, the Field of the Invention as set forth in paragraph 1 and the related art as set forth in paragraph 2. This is also confirmed by the Summary of the Invention in paragraph 12 and the Description of the Preferred Embodiments as set forth in paragraph 37. Thus, it is quite clear that the Watanabe et al. reference is directed to a Network photographic service system. This is in contrast to providing a kit to a customer. The images being provided by the service provider in Watanabe et al. is provided over a Network, such as the Internet. The Examiner's attempt to define a kit as consisting of a household, an office, a mini-lab, special lab and an image retaining device such as a scanner. However, it is respectfully submitted that this is not a kit to which the present invention is directed. The system of Watanabe et al. is not something that can be provided to a customer in the form of a package. Quite the contrary, what is described by the Examiner, is a system of sharing images over a communication network. These are not positive physical items that are provided to the customer as taught and claimed by applicant. The photo album in Watanabe et al., is an electronic album which is forwarded by the service provider to the user as clearly set forth in paragraphs 67 and 70. There is no teaching or suggestion for providing a registration card in Watanabe et al. as claimed by applicant. There is no support or teaching of providing a Registration card in Watanabe et al. There is no teaching or suggestion of physically providing a kit to a customer as taught and claimed by applicant.

The registration card of the present invention is used for registering unique IDs of image retaining devices prior to the receipt of the image retaining device by the photoservice provider. In this way, the service provider by receipt of these

image retaining devices will automatically associate these devices whereby the user can later access images obtained from these devices.

As set forth in Watanabe et al., paragraph 39, images are scanned and placed on a database in a form describing the register ID and a pass regarding the images is returned to the user together with a generated print. Thus, the ID associated with the images, is generated by the service provider that allows later access by the user. This is further reinforced by paragraph 41 wherein there is discussed a laboratory server 8 registers the image data read from a film by the scanner. It is this returned ID that allows the user to access the images over the communication network. There is no teaching or suggestion of registering the image retaining devices prior to the receipt of the image retaining device by the service provider. Quite the contrary, what is taught by Watanabe et al. is the registering of the IDs after they have been received.

Applicant respectfully traverses the Examiner's statement that the image storage device such as a database 18 somehow teaches a kit. A database is not a kit but is something on which images are stored and in Watanabe et al. is a database provided by the service provider and not sent to the user.

In the remarks section of the Official Action the Examiner argues that an image retaining device can be a scanner for retaining images and conversely an image data base 17 can also be an image retaining means. However, applicants' claims are quite clear that the image retaining device is something designed for the capturing of images. Furthermore, this is in the kit that is provided to the customer. With regard to the statement "The registration card is a conventional paper album with an ID", applicant does not understand this statement as there is no teaching or suggestion that this is a registration card that is used for registering various different unique IDs with a service provider with regard to images later to be provided with respect to the image retaining devices. Further, the software suggested by plug-in 22 is not something that is provided as a kit as previously described but is something that is provided over a communication network. As previously noted, there is no kit, as set forth by the normal meaning of "kit" that is supplied to a customer as taught and claimed by applicant.

With regards to the Examiner's remarks that there is no language stated in claim 1 which states that the kit is provided to a customer. As previously argued, statements in the preamble claim are considered parts of the claim when it is essential to the claim. In this regard, applicant respectfully submits that the kit to which the present invention is directed to is clearly a part of the claim as it is important and gives life to the claim in which the kit includes a plurality of articles.

The Examiner argues that Watanabe et al. teaches a conventional paper album with an ID. However, the only album applicants have been able to find is on a Network. Applicants have not been able to ascertain where a paper album is supplied. Further, the fact that an album may have an ID is not the same as registering an image capture device to which the registration card of the present device is directed.

For the above reasons, it is respectfully submitted that the Watanabe et al. reference does not teach or suggest the invention as taught and claimed by Applicant in claims 1, 3-12 and 14-23.

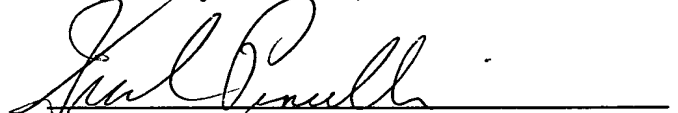
Claim 2 is not obvious over EP 0 9030 774 in view of Official Notice.

Claim 2 is dependent on claim 1 and is therefore patentably distinct for the same reasons previously discussed. Claim 2 further states that the software program is provided on a CD which is a physical device that is used on a computer. This simply further defines what is specifically in the kit supplied to the customer. The fact the CD's are well known does not detract from the patentability of the claimed kit.

Conclusion

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frank Pincelli', is written over a horizontal line.

Attorney for Appellants
Registration No. 27,370

Frank Pincelli/phw
Telephone: 585-588-2728
Facsimile: 585-477-4646
Enclosures

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.

Appendix I - Claims on Appeal

1. A kit provided to a customer for organizing a plurality of images obtained from a customer provided image retaining device, said kit comprising:

an image retaining device for capturing of images, said image retaining device having an unique ID which has been forwarded to a database of a network photoservice provider where images obtained later from said image retaining device can be stored;

a registration card for use in accessing said photoservice provider by said customer for registering said unique ID of said image retaining device by said customer prior to receipt of said image retaining device by said photoservice provider; and

a computer software program such that when loaded on a computer accessible by said customer will allow the customer to accomplish certain operations at the network photoservice provider with respect to images obtained from said image retaining device.

2. A kit according to claim 1 wherein said computer software program is provided on a CD.

3. A kit according to claim 1 wherein said kit is associated with a particular good or service to be provided to said customer.

4. A kit according to claim 1 wherein said image retaining device comprises a roll of photographic film.
5. A kit according to claim 1 wherein said computer program allows said customer to register additional image retaining devices.
6. A kit according to claim 3 wherein said computer program allows the customer to select, modify and/or change said goods and/or services that are to be provided.
7. A kit according to claim 1 wherein a plurality of said image retaining devices are provided in a single package.
8. A kit according to claim 1 wherein said image retaining device comprises a roll of photographic film.
9. A kit according to claim 8 wherein said unique ID is provided on said roll of photographic film.
10. A kit according to claim 9 wherein a plurality of said rolls of photographic film are provided film cartridges, said plurality of film cartridges are provided in a single package.

11. A kit according to claim 10 wherein said package is provided with a plurality of stickers, said stickers having said unique ID written thereon. Said sticker capable of being placed on said film cartridge to create a film cartridge having said unique ID.

12. A kit according to claim 11 wherein said unique ID on said sticker is in a machine readable form that can be read by a scanner.

13. A kit according to claim 1 wherein said registration card is provided with a security label for covering said unique ID written thereon such that said unique ID can not be viewed.

14. A kit provided to a customer for organizing a plurality of images obtained from a customer provided image retaining device, said kit comprising:

a registration card for use in accessing a network photoservice provider for registering a unique ID of an image retaining device provided by said customer, said image retaining device is used to capture images thereon, said registration of said unique ID occurring prior to said network photoservice receiving said image retaining device; and

a computer accessible by said customer software program such that when loaded on a computer will allow the customer to accomplish certain operations at the network photoservice provider with respect to images obtained from said image retaining device.

15. A kit according to claim 14 wherein said kit is associated with a particular good or service to be provided to said customer.

16. A kit according to claim 15 wherein said computer software is downloaded from said photoservice provider.

17. A kit according to claim 14 wherein said image retaining device comprises a roll of photographic film.

18. A kit according to claim 14 wherein said computer program allows said customer to register additional image retaining devices.

19. A kit according to claim 15 wherein said computer program allows the customer to select, modify and/or change said goods and/or services that are to be provided.

20. A kit according to claim 14 wherein a plurality of said image retaining devices are provided in a single package.

21. A kit according to claim 1 wherein said image retaining devices comprises a roll of photographic film.

22. A kit according to claim 21 wherein said unique ID is provided on said roll of photographic film.

23. A kit provided to a customer for organizing a plurality of images obtained from a customer provided image retaining device, said kit comprising:

an image storage device provided by said customer for storing of images, said image storage device having a unique ID which has been forwarded to a database of a network photoservice provider by said customer wherein said unique ID is used by said network photoservice provider to register a certain good and/or service to said customer that is to be associated with images obtained from said image storage device prior to receipt of said image retaining device by said photoservice provider; and

a computer software program such that when loaded on a computer accessible by said customer will allow the consumer to accomplish certain operations at the photoservice provider with respect to said images obtained from said image retaining device.

Appendix II - Evidence

Webster's II

New College Dictionary

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WEBSTER New College Dictionary

the Webster's You

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Units and Tables — newly updated

units of measurement, geologic time, measurement

Style Guide — a concise review of capitalization

rules with examples, punctuation, and forms of address.

Accurate Illustrations — over 1,000

to enhance definitions. See the illustration of an *asymptote* and an *icosahedron*.

Architrave — a decorative molding at the top of a doorway.

the Webster's You

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king-ship (king'ship) *n.* 1. The position, power, province, or prerogative of a king. 2. The domain ruled by a king: KINGDOM. 3. A king's tenure: REIGN. 4. The style of a king: MAJESTY. 5. A monarchy.

king-size (king'siz) *also king-sized* (-sized) *adj.* Larger than the standard or usual size <a king-size bed>

king snake *n.* A venomous New World snake of the genus *Lampropeltis*, having yellow or reddish markings.

king-wood (king'wōd) *n.* 1. A South American tree, *Dalbergia ecastis*, having hard, fine-textured, purplish-brown wood used in cabinetmaking. 2. The wood of the kingwood tree.

ki-nin (ki'nin) *n.* [Gk. *kinein*, to move + -in.] Any of various polypeptides that act in the contraction of smooth muscle.

kink (king) *n.* [LG *kinke* < MLG.] 1. A tight curl or a sharp twist in a wirelike material, typically caused by the tensing of a looped section. 2. A painful muscle spasm: CRICK. 3. A slight difficulty or flaw. 4. A physical or mental quirk. 5. A clever idea. — *vt.* & *vi.* **kinked**, **kink-ing**, **kinks**. To form kinks.

kink-a-jou (king'ka-jō) *n.* [Fr. *quincajou*, of Algonquian orig.] A tropical American arboreal mammal, *Potos flavus*, with brownish fur and a long prehensile tail.

kink-y (king'kē) *adj.* **-i-er**, **-i-est**. 1. Tightly curled: FRIZZY. 2. Informal. a. Marked by or engaging in a perverted eroticism. b. Sexually perverted. — **kink'i-ly** *adv.* — **kink'i-ness** *n.*

kin-ni-kin-nick *also kin-ni-kin-nic* (kin'i-ki-nik') *n.* [Of Algonquian orig.] 1. A preparation made from dried leaves, bark, and occas. tobacco and smoked esp. by American Indians. 2. A plant, as the bearberry, whose leaves or bark were used in kinnikinnick.

ki-no (ke'nō) *n.* **-nos**. [Prob. < Mandingo *keno*.] A reddish resin obtained from several Old World tropical trees of the genera *Pterocarpus* and *Butea*.

-kins *suft. var. of -kin.*

kins-folk (kinz'fōk') *pl. n.* *var. of* KINFOLK.

kin-ship (kin'ship) *n.* The state or quality of being kin.

kins-man (kinz'man) *n.* 1. A man relative. 2. A man sharing the same racial, cultural, or national background as another.

kins-wom-an (kinz'wōm'an) *n.* 1. A woman relative. 2. A woman sharing a racial, cultural, or national background with another.

ki-osh (ke'ōsk', kē-ōsk') *n.* [Fr. *kiosque* < Turk. *kōshk* < Pers. *kūshk*, portico.] 1. An open pavilion or gazebo. 2. A small structure used as a newsstand or refreshment booth. 3. A cylindrical structure on which advertisements are posted.

Ki-o-wa (ki'ō-wō', -wā', -wā') *also Ki-o-way* (-wā') *n.* **pl.** **Ki-owa** or **-was** *also Kioway* or **-ways**. [Kiowa *Kā-i-gwū*.] 1. A member of a Plains Indian people once living in Colorado, Oklahoma, Kansas, New Mexico, and Texas, now in Oklahoma. 2. The Uto-Aztecan language of the Kiowa.

Kiowa Apache *n.* **pl.** **Kiowa Apache** or **Kiowa Apaches**. 1. A member of an American Indian people of the southern Great Plains who formed part of the Kiowa tribe although speaking an unrelated Athapascan language. 2. The Athapascan language of the Kiowa Apache.

kip (kip) *n.* **pl.** **kip**. [Thai.] — See table at CURRENCY.

kip (kip) *n.* [Obs. Du.] The untanned hide of a small or young animal, as a cat.

kip (kip) [Poss. < Dan. *kippe*, cheap inn.] **Chiefly Brit.** — *n.* 1. A boarding house. 2. A room or bed in a boarding house. 3. A bed. 4. Sleep. — *vi.* **kipped**, **kip-ping**, **kips**. To sleep.

kip (kip) *n.* [ki(LO) + p(OUND).] A 1,000-pound unit of weight.

kip-per (kip'ar) *n.* [ME *kypre* < OE *cypere*.] 1. A male salmon or sea trout in the spawning season. 2. A split, salted, and smoked herring. — *vt.* **-pered**, **-per-ing**, **-pers**. To cure (fish) by splitting, salting, and smoking.

kir *also Kir* (kir) *n.* [After Canon Félix Kir (1876–1968), mayor of Dijon, France.] A drink consisting of dry white wine or champagne flavored with cassis.

Kir-ghiz (kir-gēz') *n.* **pl.** **Kirghiz** or **-ghiz-es**. 1. A member of a Turkic people residing chiefly in Kirghiz. 2. The Turkic language of the Kirghiz.

kir-i-ga-mi (kir'i-gā'mē) *n.* [J. *kiri*, to cut + *kami*, paper.] The Japanese art of making ornamental designs by cutting and folding paper.

kirk (kirk) *n.* [ME < ON *kirkja* < OE *cirice*, church. — see CHURCH.] 1. Scot. A church. 2. **Kirk**. **Chiefly Brit.** The Presbyterian Church of Scotland.

Kir-li-an photography (kir'lē-ən) *n.* The process of photographing an object by exposing film in a dark room to ultraviolet light that results from electronic and ionic interactions caused by an applied electric field. [After S. D. and V. K. Kirlian, 20th-cent. Russian electricians.]

kirsch (kirsh) *n.* [G. *Kirsch(wasser)*, cherry (water).] A colorless brandy made from fermented cherry juice.

kir-tle (kirt'l) *n.* [ME < OE *cyrtel*, prob. ult. < Lat. *curtus*, shortened.] 1. A knee-length tunic or coat once worn by men. 2. A woman's long dress or skirt.

kish-ke (kish'kə) *n.* [Yiddish, of Slav. orig.] **DERMA**.

Kis-lev (kis'laf) *n.* [Heb. *kislēw*.] The third month of the year in the Jewish calendar. — See table at CALENDAR.

kis-met (kiz'met', -mit) *n.* [Turk. < Ar. *qismah*, portion < *qasama*, he allotted.] Fate: fortune.

kiss (kis) *v.* **kissed**, **kiss-ing**, **kiss-es**. [ME *kissen* < OE *cysan*, affection, greeting, or respect. 2. To touch lightly. — *vi.* To express mutual touching or caressing with the lips. — **kiss off**. Informal. To get rid of; dismiss. — *n.* 1. a. A caress or touch with the lips: a slight or gentle touch. 2. a. A small piece of candy, esp. of chocolate. b. A baked confection of meringue. — **kiss good-by**. To say good-bye to the loss of.

kiss-er (kis'ar) *n.* 1. A person who kisses. 2. Slang. The human mouth. 3. Slang. The human face.

kissing bug *n.* An assassin bug, *Melanolestes pictipes*, that takes a painful bite, often on the lips of a sleeping person.

kissing cousin *n.* A distant relative known well enough to be kissed when greeted.

kissing disease *n.* Informal. Mononucleosis.

kiss of death *n.* [From the kiss by which Judas betrayed Jesus.] Something ultimately ruinous.

kiss-off (kis'of', -ōf') *n.* Informal. A dismissal.

kiss of life *n.* **Chiefly Brit.** Mouth-to-mouth resuscitation.

kiss of peace *n.* A ceremonial gesture, as a kiss or a handclasp, as a sign of brotherhood in Christian liturgies.

kist (kist) *n.* *var. of* CIST.

kit (kit) *n.* [ME *kitt*, wooden tub.] 1. A set of articles used for a particular purpose <a survival kit> <a travel kit> 2. A set of parts or materials to be assembled <a stereo kit> 3. A packaged set of electronic materials <a sales kit> 4. A container for a kit. 5. **Chiefly Brit. & regional.** A tub. — **the (whole) kit and caboodle**. Informal. The entire lot or collection.

kit (kit) *n.* [Short for KITTEN.] 1. A kitten. 2. A young, often male, sized fur-bearing animal.

kit (kit) *n.* [Orig. unknown.] A small three-stringed violin.

kitchen (kich'an) *n.* [ME *kichene* < OE *cycene*, ult. < LLat. *coquina* < fem. of Lat. *coquinnus*, of cooking < *coquere*, to cook; LLat. place where food is cooked or prepared. 2. The facilities and equipment used in preparing and serving food. 3. A department that prepares, cooks, and serves food.

kitchen cabinet *n.* 1. A cabinet or cupboard for kitchen use. 2. An informal group of advisers to a head of state.

kitchen-er (kich'a-nar) *n.* 1. A manager of a kitchen, esp. in a monastery. 2. **Chiefly Brit.** A large cooking stove.

kitchen-ette (kich'a-nēt') *n.* A small kitchen.

kitchen garden *n.* A garden in which vegetables and fruits are grown for household use.

kitchen midden *n.* [Transl. of Dan. *køkkenmødding*.] A heap or mound with artifacts, shells, and often bones indicating the site of a primitive human settlement.

kitchen police *n.* 1. Enlisted military personnel assigned to kitchen work. 2. The work of the kitchen police.

kitchen-ware (kich'an-wār') *n.* Utensils for kitchen use.

kite (kit) *n.* [ME, bird of prey < OE *cyta*.] 1. A light framework covered with cloth, plastic, or paper, designed to climb and fly in a steady breeze at the end of a long string. 2. Any of the light sails of a ship used in a light wind. 3. Any of various predatory birds of the subfamilies Milvinae and Elaninae, having long, often forked tails. 4. Notable paper, as a check, representing a fictitious financial transaction and used temporarily to sustain credit or raise money. — *v.* **kited**, **kit-ing**, **kites**. — *vi.* 1. To fly like a kite. 2. To get money or credit with a kite. — *vt.* To use a kite to sustain credit or raise money.

kith and kin (kith'ən kin') *n.* [ME *kyth* < OE *cyð*.] Friends and neighbors.

kitsch (kich) *n.* [G. < *kitschen*, to put together sloppily.] 1. Pretentious bad taste, esp. in the arts. 2. Something that exemplifies kitsch. — **kitsch'y** *adj.*

kit-ten (kit'n) *n.* [ME *kitoun*, prob. < ONFr. **caton*, dim. of *cat* < LLat. *cattus*.] A young cat. — *vi.* **-tened**, **-ten-ing**, **-tens**. To bear kittens.

kit-ten-ish (kit'n-ish) *adj.* Playful and coy. — **kit'ten-ish-ly** *adv.* — **kit'ten-ish-ness** *n.*

kit-ti-wake (kit'tē-wāk') *n.* [Limit. of its cry.] A gull. *Rissa tridactyla* or *R. brevirostris*, of northern regions.

kit-tle (kit'l) *adj.* [Sc. < ME *kittellen*, prob. of ON orig.] Scot. 1. Unpredictable: capricious. 2. Touchy.

kit-ty (kit'tē) *n.* **pl.** **-ties**. [Sc. < ME *kitt*.] 1. a. An extra hand or part of a hand to be used by the highest bidder in some card games. b. A card made up of a portion of each player's winnings in a card game, used to pay the game expenses. 2. A pool of money.

kit-ty (kit'tē) *n.* **pl.** **-ties**. [Shortening and alteration of *kit-ty*.] Informal. A cat, esp. a kitten.

kit-ty-cornered (kit'tē-kōr'nard) *adj.* Cater-cornered.

Kitty Litter. A trademark for absorbent material used in a box or pan for the waste of small domestic pets, esp. cats.

ki-va (kē'və) *n.* [Hopi.] An underground or partially underground room in a Pueblo Indian village, used by the men esp. for ceremonial or councils.

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